IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

WP(C).No. 4818 of 2007(W)

PETITIONER:

LIMSY V.O., W/O.POLY JOSE,
AGED 35 YEARS, SRAMBICAL (H), PULIYANAM P.O.,
ALUVA TALUK, ERNAKULAM DT., KERALA.

BY ADV. SRI.C.A.JOY

RESPONDENTS:

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1. ELAVOOR SERVICE CO-OPERATIVE BANK LTD.
   NO.1009, ELAVOOR, REPRESENTED BY ITS PRESIDENT.

2. JOINT REGISTRAR OF CO-OPERATIVE
   SOCIETIES, ERNAKULAM.

3. SHINY JOSEPH, W/O.JOY M.P.,
   MADAVANA (H), VATTAPARAMBU P.O., KODUSSERY.

4. LISHA THOMAS, W/O. BINOY,
   KANNAMPUZHA (H), NALUKETTU P.O., KORATTY.

5. SANTHOSH KUMAR, S/O.SUBRAMANIYA WARRIER,
   SREEKANDESWARATHU WARRIYAM, ELAVOOR P.O.,
   ELAVOOR.

6. POULOSE P.T., PAROOKARAN (H),
   PULIYANAM P.O., MAMBRA.

7. BENNY K.B., S/O.BEMBAS,
   KANNAMPUZH, VATTAPPARAMBU P.O.,
   KARIPPASSERY.

BY GOVERNMENT PLEADER SMT. LATHA THANKAPPAN
ADV. SRI.P.V.BABY
SRI.P.N.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE APPROVAL OF ADDIITONAL POSTS IN THE 1ST RESPONDENT BANK.

EXT.P2: COPY OF THE COMPLAINT DATED 14-08-2006 SUBMITTED IN THE SECOND RESPONDENT.

EXT.P3: COPY OF THE ORDER ISSUED BY 2ND RESPONDENT DATED 05.08.2006

EXT.P4: COPY OF THE JUDGMENT DATED 25-09-2006 ISSUED BY THIS BON'BLE COURT.

EXT.P5: COPY OF THE ORDER ISSUED BY 2ND RESPONDENT DATED 24-01-2007.

EXT.P6: COPY OF THE REPRESENTATION DATED 08.02.2007 SUBMITTED TO 2ND RESPONDENT.

RESPONDENTS EXHIBITS:

EXT.R1(a): COPY OF THE ORDER DATED 25.04.06 ISSUED BY THE 2ND RESPONDENT.

EXT.R1(b): COPY OF THE CIRCULAR No.18/91 DATED 7.6.91 ISSUED BY THE REGISTRAR OF Co-op. SOCEITIES.

EXT.R1(c): COPY OF THE NOTIFICATIONS DATED 28.6.06 AND 27.06.06 IN MATHRUBHUMI & VEEKSHANAM DAILIES.

EXT.R1(d): COPY OF THE STAY ORDER DATED 5.08.06.

EXT.R1(e): COPY OF THE RANK LIST APPROVED BY THE MANAGING COMMITTEE.

EXT.R1(f): COPY OF THE ORDER DATED 24.01.07.

EXT.R1(g): COPY OF THE NOTICE DATED 26.9.06 ISSUED BY 2ND RESPONDENT.

EXT.R1(h): COPY OF THE INTERIM ORDER DATED 22.1.2007 IN W.P.(C) No.27653/06 BEFORE THIS HON'BLE COURT.

EXT.R1(i): COPY OF THE ATTENDANCE SHEET.\

EXT.R1(j): COPY OF THE APPLICATION OF SOUMYA.

EXT.R1(k): COPY OF THE RESOLUTION OF THE MANAGING COMMITTEE DATED 29.01.2007.

EXT.R3(a): COPY OF THE APPOINTMENT ORDER DATED 29.1.2007 ISSUED BY THE 1ST RESPONDENT TO THE 7TH RESPONDENT.

EXT.R3(b): COPY OF THE RECEIPT DATED 31.1.2007 ISSUED BY THE 1ST RESPONDENT TO THE 7TH RESPONDENT.

TRUE COPY

P.A.TO JUDGE

S.SIRI JAGAN,J

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W.P.(C).No.4818 OF 2007

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Dated this the 16th day of March,2007

JUDGMENT

The petitioner is an aspirant for the post of Peon and Attender in the first respondent society. She participated in the written test and interview conducted by the first respondent. The petitioner has serious allegations against the manner of conduct of the written test and interview. She alleges that due to the fraud and corruption played by the Board of Directors of the society, the petitioner has been excluded from selection although she was meritorious enough to be selected. The allegation is that the Board of Directors has manipulated the written test and interview in such a way as to select persons of their choice selected. The petitioner therefore filed a petition under Rule 176 of the Kerala Co-operative Societies Rules before the second respondent seeking appropriate action in the matter. She now seeks a direction to the second respondent to dispose of Ext.P6 petition filed by her.

2. The first respondent society has filed a counter affidavit denying all the allegations of the petitioner and justifying their action in the matter of selection of suitable candidates for appointment to the post of Peon and Attender in the society. A counter affidavit has

also been filed by respondent Nos.3 to 7 who are the selected persons for appointment. They would submit that they have already joined duty pursuant to the appointment letter issued by the first respondent. They would also categorically deny any fraud or irregularity in the conduct of the written test or interview.

3. I am not inclined to go into the contentions on merit regarding allegations raised by the petitioner against the written test and interview, in this writ petition, which I cannot also do, without taking evidence, as disputed questions of facts are involved.

4. The counsel for the first respondent as well as respondent Nos. 3 to 7 raise a contention that in view of Section 69 of the Kerala Co-operative Societies Act, the second respondent-Joint Registrar does not have any jurisdiction to consider the matter under Rule 176 of the Rules. The contention raised by them is that under Sections 69 (1) and 69(2) (d), any dispute arising in connection with employment of officers and servants of the different classes of societies specified in sub-section(1) of Section 80, including their promotion and inter se seniority is to be decided by the Arbitration Court. Further they contend that Section 69(1) specifically states that disputes under Section 69 shall be referred to the Co-operative Arbitration Court under Section 70 A in the case of non-monetary disputes and the Registrar in the case of monetary disputes and to the Arbitration

Court or the Registrar, as the case may be, shall decide such dispute and no other court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute. The counsel would submit that in view of this specific provision in sub section (1) of Section 69, the dispute now raised by the petitioner being a dispute coming within sub Section 2(d) of Section 69, the jurisdiction of the second respondent under Rule 176 is impliedly ousted, since this is obeviously a non-monetary dispute.

5. On the other hand, the learned counsel for the petitioner would submit that a dispute under Section 69, whether it comes within sub section 2(d) or not, can be raised only by one of the persons mentioned in sub clause (a) to (h) of Sub Section (1) of Section 69 and no other person. That being so, the ouster of jurisdiction even if it applies, has application only to those disputes raised by any of the persons mentioned in those sub clauses against those persons mentioned therein. The contention of the petitioner is that she is not a member; a past member or claiming through any member or an employee or a creditor or any of the other persons mentioned in clause (a) to (h). In such circumstances, she cannot validly raise a dispute under Section 69. Therefore, notwithstanding Sub Section 2(d), no dispute can be raised by her under Section 69. Therefore, she submits that her petition under Rule 176 is perfectly

maintainable before the second respondent Joint Registrar under Rule 176. In such circumstances, the petitioner submits that she has a right to get her petition under Rule 176 considered by the second respondent Joint Registrar.

6. I have considered the rival contentions in detail. For understanding the rival contentions it is necessary to examine Section 69, as a whole ,which reads as under;

> "69. Disputes to be decided by Co-operative Arbitration Court and Registrar;-
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> (1) Notwithstanding anything contained in any law for the time being in force , if a dispute arises;-
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> (a) among members, past member and persons claiming through members, past members and deceased members; or
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> (b) between a member, past member or person claiming through a member, a past member or deceased member and the society, its committee or any officer, agent or employee of the society; or
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> (c) between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society; or
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> (d) between the society and any other society; or
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> (e) between a society and the members of a society affiliated to it; or
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> (f) between the society and a person, other than a member of the society, who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or

(g) between the society and a surety of a member, past member, deceased member or employee or a person, other than a member, who has been granted a loan by the society, whether such a surety is or is not a member of the society; or

(h) between the society and a creditor of the society; such dispute shall be referred to the Co-operative Arbitration Court constituted under Section 70 A, in the case of non-monetary disputes and to the Registrar, in the case of monetary disputes and the Arbitration Court, or the Registrar , as the case may be, shall decide such dispute and no other court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

(2) For the purpose of sub section(1), the following shall also be deemed to be disputes, namely:-

(a) a claim by the society for any debt or demand die to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor, where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of the Board of Management or any officer of the society;

Explanation:- A dispute arising at any stage of an election commencing from the convening of the general body meeting for the election shall be deemed to be a dispute arising in connection with the election;

(d) any dispute arising in connection with employment of officers and servants of the different classes of societies specified in sub section (1) of Section.80, including their promotion and inter se seniority.

(3) No dispute arising in connection with the election of the Board of Management or an officer of the society shall be entertained by the Co-operative Arbitration Court unless it is referred to it within one month from the date of the election."

7. At the outset I must say that whether the jurisdiction of the Registrar under Rule 176 is ousted because of the Section 69 after its amendment including Section 2(d) thereby, itself is very much in doubt. Prima facie I am of opinion that notwithstanding sub section 2(d) of Section 69, even in case of service matters if the resolution of a society in respect of a service matter suffers from any of the infirmities mentioned in Rule 176 the Registrar's power under that Rule cannot be affected by Section 69. However, I am not going into that question in detail now because it is not relevant for the purpose of this case, in so far as according to me, the dispute now raised by the petitioner would not come within the purview of Section 69 at all notwithstanding sub section 2(d) thereof.

8. A dispute under Section 69 can be raised only by any of the persons mentioned in Sub clause (a) to (h) of Section 69(1). The petitioner is only an aspirant to the post of Peon or Attender in the first respondent society. On a perusal of clause (a) to (h), I am of opinion that the petitioner does not come within any of the said clauses (a) to (h). Since the petitioner is not a person who comes within those clauses clearly no dispute arising on any matter between the petitioner and the society would not be a dispute as contemplated under Section 69 of the Act. That being so, even assuming that the amended Section 69 impliedly ousts the jurisdiction of the Registrar

under Rule 176 in respect of non-monetary disputes (which as I said above is very much in doubt) it is abundantly clear that a dispute raised by the petitioner would not come within the purview of the Section 69 at all. That being so, I do not find any merit in the contention of the first respondent and respondents 3 to 7 that since the remedy of the petitioner lies in raising a dispute under Section 69 before the Arbitration Court the petition filed by the petitioner under Rule 176 before the Joint Registrar would not lie.

9. Since I have negatived the contention that a dispute can be raised by the petitioner under Section 69, I am inclined to direct the second respondent-Joint registrar to consider and pass appropriate orders in accordance with law on Ext.P6 petition submitted by the petitioner. However, I make it clear that it would be open to the parties to raise the question of jurisdiction or lack of it of the second respondent Joint Registrar to deal with matters relating to selection of staff in a society under Rule 176 on the ground that the issue raised is not covered by Rule 176 the resolution in question not suffering from any information mentioned in Rule 176, and that I have not expressed any opinion on merits on the same, except that no dispute would lie in respect of the same under Section 69 . All other contentions are left open to be agitated before the second respondent Joint Registrar himself. Accordingly, there would be a direction to the

second respondent to consider Ext.P6 application submitted by the petitioner as expeditiously as possible at any rate within one month from the date of receipt of a copy of this judgment. Since in this writ petition there is an order of stay to the effect that appointment if any made would be subject to the result of the writ petition, I make it clear that appointments of respondents 3 to 7 by the first respondent would be subject to final orders to be passed by the Joint Registrar on Ext.P6.

Writ petition is disposed of as accordingly.

S.SIRI JAGAN,JUDGE

dvs